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<b>B.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-6</b>
	)	<b>Issued: February 27, 2015</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Chicago, IL, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On October 1, 2014 appellant filed a timely appeal from a May 13, 2014 merit decision denying her claim for compensation and a June 27, 2014 nonmerit decision denying reconsideration. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a left foot injury on December 10, 2013; and (2) whether OWCP properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On February 4, 2014 appellant, then a 52-year-old mail handler, filed an occupational disease claim alleging that she sustained an injury to her left ankle as a result of her employment

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

duties which included lifting, pushing, pulling, throwing, and walking with equipment. She stated that on December 10, 2013 she first became aware of her left foot condition and realized that it was caused or aggravated by her employment. Appellant advised that her left ankle was swollen, inflamed, and infected and it was hard to walk. She stopped work on November 26, 2013 and intermittently submitted CA-7 forms claiming periods of disability. No evidence was submitted with the claim.

By letter dated April 1, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the type of medical and factual evidence required to support her claim and accorded 30 days to submit such evidence.

In response, appellant submitted a position description of mail handler and on April 10, 2014 she signed the questionnaires for completion but did not include any factual information with the questionnaire.

In an April 1, 2014 report, Dr. Jondelle B. Jenkins, a podiatrist/foot surgeon, stated that appellant had been seen since December 10, 2013 for a primary diagnoses of pes planus, stage 2 posterior tibial tendinitis which was aggravated by an on-the-job injury. She noted the treatment modalities appellant underwent prior to her reconstructive surgical procedure to the left foot in February 2014. Dr. Jenkins stated appellant's postoperative condition had not improved to the point where she was able to return to work and maximum medical improvement had not been achieved. She stated that appellant's condition was exacerbated by prolonged walking and standing.

By decision dated May 13, 2014, OWCP denied appellant's claim on the grounds that there was no medical evidence containing a diagnosis causally related to the accepted work event(s).

On June 17, 2014 OWCP received appellant's June 12, 2014 request for reconsideration. Appellant submitted a new Form CA-7, claim for compensation, dated May 8, 2014. No new medical evidence was submitted with the reconsideration request.

By nonmerit decision dated June 27, 2014, OWCP denied reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

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<sup>2</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>3</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition, and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition, and the specific employment factors identified by the claimant.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that her employment as a mail handler caused or aggravated her left foot condition on December 10, 2013. OWCP accepted and the evidence establishes that she filed a timely claim; that the employment factors occurred; that a medical condition had been diagnosed; and that she was within the performance of duty. The issue is whether the medical evidence establishes that the diagnosed medical condition of pes planus stage 2 posterior tibial tendinitis was caused by the accepted work activities.

The Board finds that appellant has not established that the diagnosed left foot condition was causally related to her work activities.

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<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>5</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>6</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Sedi L. Graham*, 57 ECAB 494 (2006).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The determination of whether an employment injury is causally related to work factors is generally established by medical evidence.<sup>8</sup> The only medical evidence submitted was Dr. Jenkins' April 1, 2014 report. In that report, Dr. Jenkins diagnosed the medical condition of pes planus stage 2 posterior tibial tendinitis, which she opined was aggravated by an on-the-job injury. However, no description was provided as to frequency and duration of the accepted work activities, or how they aggravated her foot condition. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup> While Dr. Jenkins indicated that appellant's condition was exacerbated by prolonged walking and standing and indicated that her primary diagnosis was "aggravated by an on-the-job injury," she failed to provide any medical rationale as to how walking and standing at work was different from walking and standing outside of work and made no reference to a specific on-the-job incident. A physician must provide a narrative description of the specific employment duties and a reasoned opinion on whether the employment duties described caused or contributed to appellant's diagnosed medical condition.<sup>10</sup> Due to these deficiencies, this report is insufficient to meet appellant's burden of proof.

To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the medical condition was caused by the employment.<sup>11</sup> The issue of whether appellant's foot condition was caused but any work activities is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history.<sup>12</sup> Appellant did not submit sufficient medical evidence to establish that her employment caused an injury.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment or the belief that her condition was caused, precipitated, or aggravated by her employment, is sufficient to establish causal relationship.<sup>13</sup> Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

On appeal, appellant asserted that she was standing in her work areas waiting for the all-purpose containers when the bar broke loose and fell on her ankle and foot. In support of her

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<sup>8</sup> *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *K.E.*, Docket No. 08-1461 (issued December 17, 2008); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>12</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>13</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

assertion she submitted new evidence. The Board, however, is precluded from reviewing evidence which was not before OWCP at the time that it issued its final decision.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>15</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>16</sup> To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>17</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The underlying issue on reconsideration is whether appellant submitted sufficient medical evidence to show that her foot condition is caused or aggravated by factors of employment. Appellant's June 12, 2014 request for reconsideration did not allege that OWCP erroneously applied or interpreted a specific point of law. She also did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits.

In support of her reconsideration request, appellant submitted a Form CA-7 requesting additional dates of compensation. This form is not relevant to the underlying issue as to whether her left foot condition is causally related to factors of her employment. The submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. As such it did not require that OWCP reopen the claim for merit review.<sup>19</sup>

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<sup>14</sup> See 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009). If appellant is alleging a specific traumatic event, she may file a claim for traumatic injury.

<sup>15</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>16</sup> 20 C.F.R. § 10.606(b)(2). *Susan A. Filkins*, 57 ECAB 630 (2006); see *J.M.*, Docket No. 09-218 (issued July 24, 2009).

<sup>17</sup> *Id.* at § 10.607(a). *Robert G. Burns*, 57 ECAB 657 (2006); see *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

<sup>18</sup> 20 C.F.R. § 10.608(b). *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); see *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

<sup>19</sup> See *D.K.*, 59 ECAB 141 (2007).

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered; or relevant and pertinent new evidence not previously considered by OWCP. As appellant did not meet any of the regulatory requirements, OWCP properly declined to reopen her claim for further merit review.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a medical condition causally related to her federal employment, as alleged. The Board further finds that OWCP did not abuse its discretion by declining to reopen appellant's claim for merit review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 27 and May 13, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 27, 2015  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>20</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).